

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. Action No.: 1:20-CR-95
(Judge KleeH)

RICHARD KIRKLAND JOHNSON,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION CONCERNING PLEA OF GUILTY
IN FELONY CASE [ECF NO. 121] AND ACCEPTING GUILTY PLEA

On February 4, 2022, the Defendant, Richard Kirkland Johnson ("Johnson"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of **GUILTY** to Count Seven of the Superseding Indictment, without a written plea agreement, charging him with Possession with Intent to Distribute Fentanyl, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Johnson stated that he understood that the magistrate judge is not an Article III judge, and Johnson consented to pleading before the magistrate judge.

This Court referred Johnson's plea of guilty to the magistrate judge for the purpose of administering the allocution, pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

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Based upon Johnson's statements during the plea hearing, and the Government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that Johnson was competent to enter a plea, that the plea was freely and voluntarily given, that Johnson understood the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge issued a *Report and Recommendation Concerning Plea of Guilty in Felony Case* ("R&R") [ECF No. 121] finding a factual basis for the plea and recommending that this Court accept Johnson's plea of guilty to Count Seven of the Superseding Indictment.

The magistrate judge **remanded** Johnson to the custody of the United States Marshals Service.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. Neither Johnson nor the Government filed objections to the R&R.

Accordingly, this Court **ADOPTS** the magistrate judge's R&R [ECF No. 121], provisionally **ACCEPTS** Johnson's guilty plea, and

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ADJUDGES him **GUILTY** of the crime charged in Count Seven of the Superseding Indictment.

The sentencing hearing and preparation of the presentence investigation report will be scheduled by separate order.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: March 17, 2022

/s/ Thomas S. KleeH
THOMAS S. KLEE H
UNITED STATES DISTRICT JUDGE